

DOCKET#
U.S. DISTRICT COURT
WEST DIST. OF WISCONSIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

APR 10 2008

GENERAL ELECTRIC CAPITAL
CORPORATION,

FILED
THERESA M. OWENS, CLERK
Court File No.: 08-C 0011-S

Plaintiff,
v.

JOHN C. HINTZ and NANCY R. HINTZ,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT**

Defendants.

The above-entitled matter came before the Court, Chief Judge Barbara B. Crabb, on Wednesday, April 9, 2008, at 8:30 a.m. in Courtroom 250, United States Courthouse, 120 North Henry Street, Madison, Wisconsin. Plaintiff General Electric Capital Corporation was represented by Foley & Mansfield, PLLP and Frank A. Dvorak, 250 Marquette Avenue, Suite 1200, Minneapolis, Minnesota. There were no appearances by or on behalf of Defendants John C. Hintz and Nancy R. Hintz.

Based upon the files and materials, and the record from April 9, 2008, the Court makes the following Findings of Fact, Conclusions of Law and Order for Judgment.

FINDINGS OF FACT

1. Plaintiff General Electric Capital Corporation ("GECC") is a Delaware corporation with a principal place of business located at 260 Long Ridge Road, Stamford, Connecticut 06902.
2. Defendant John C. Hintz is an individual who currently resides at 7330 178th Street, Chippewa Falls, Wisconsin 54729.
3. Defendant Nancy R. Hintz is an individual who currently resides at 7330 178th Street, Chippewa Falls, Wisconsin 54729.
4. Plaintiff GECC's predecessor in interest, Premium Lease & Finance ("Premium")

entered into certain lease arrangements with Trac, Inc. ("Trac") dated October 15, 1999 and November 17, 1999, whereby Trac leased dry van trailers for use in Trac's trucking business.

5. Plaintiff GECC and Trac entered into a Master Lease Agreement dated May 15, 2003 (the "May 15 Lease") pursuant to which Trac leased dry van trailers from Plaintiff GECC.

6. Trac filed a Chapter 11 Bankruptcy case in the United States Bankruptcy Court, Western District of Wisconsin in 2006 as Case Number 1-06-11787-TSU.

7. As part of Trac's Chapter 11 Plan of Reorganization, Plaintiff GECC and Trac entered into Loan and Security Agreements dated November 6, 2006; November 13, 2006; November 20, 2006; and November 27, 2006 (hereinafter collectively "Loan Agreements").

8. Trac is in breach of the May 15 Lease and the Loan Agreements and has not made the payments called for under said documents.

9. As a condition for entering into the May 15 Lease, the Loan Agreements and the Premium Leases, Defendant John C. Hintz executed an Unconditional Guaranty dated October 15, 1999; a Continuing Guaranty dated November 17, 1999; and Individual Guaranty dated May 15, 2003; and a Continuing Guaranty dated November 6, 2006.

10. As a condition for entering into the May 15 Lease, the Loan Agreements and the Premium Leases, Defendant Nancy R. Hintz executed a Continuing Guaranty dated November 17, 1999 and an Individual Guaranty dated June 21, 2005.

11. On February 4, 2008, Defendant John C. Hintz was personally served with a Summons and Complaint.

12. On February 4, 2008, Defendant Nancy R. Hintz was personally served with a Summons and Complaint.

13. Defendant John C. Hintz has failed to plead or otherwise defend.
14. Defendant Nancy R. Hintz has failed to plead or otherwise defend.
15. On February 28, 2008, Plaintiff GECC moved for Default Judgment pursuant to Fed. R. Civ. P. Rule 55(a) & (b)(1). Notice of the Motion for Clerk's Entry of Judgment was served on Defendants John C. Hintz and Nancy R. Hintz by mail on February 29, 2008.
16. On March 17, 2008, an Order granting the Motion for Entry of Default was signed by Theresa M. Owens, Clerk of Court.
17. On March 19, 2008, the Court set hearings for Default Judgment for April 9, 2008, at 8:30 a.m. in the United States Courthouse, 120 North Henry Street, Madison, Wisconsin before Chief Judge Barbara B. Crabb.
18. On March 31, 2008, Defendants John C. Hintz and Nancy R. Hintz were served by mail with Notice of the hearing on April 9, 2008.
19. That Trac, Inc. is indebted to Plaintiff GECC in the amount of Six Hundred Forty-Four Thousand, Nine Hundred Forty and 04/100 Dollars (\$644,940.04) under the May 15 Lease, the Loan Agreements and the Premium leases.
20. That Defendants John C. Hintz is indebted to Plaintiff GECC in the amount of Six Hundred Forty-Four Thousand, Nine Hundred Forty and 04/100 Dollars (\$644,940.04) under the John C. Hintz guaranties.
21. That Defendant Nancy R. Hintz is indebted to Plaintiff GECC in the amount of Six Hundred Forty-Four Thousand, Nine Hundred Forty and 04/100 Dollars (\$644,940.04) under the Nancy R. Hintz Guaranties.

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction for this matter pursuant to 28 U.S.C. § 1332 in that it involves citizens of different states and the amount in controversy exceeds \$75,000.00.

2. Venue in the Court is proper as the events giving rise to this action occurred in Wisconsin and Defendants John C. Hintz and Nancy R. Hintz reside in Wisconsin.

3. Defendants John C. Hintz and Nancy R. Hintz have been properly served with a Summons and Complaint.

4. Defendants John C. Hintz and Nancy R. Hintz have failed to plead or otherwise defend in this action.

5. Plaintiff GECC has properly moved for a Clerk's Entry of Default Judgment under Fed. R. Civ. P. Rule 55(a) & (b)(1).

6. That Defendants John C. Hintz and Nancy R. Hintz have been given Notice of the Motion for Entry of Default Judgment pursuant to Fed. R. Civ. P. Rule 55(a) & (b)(1).

7. That Defendants John C. Hintz and Nancy R. Hintz have been given Notice of the Hearing on the Motion for Entry of Default Judgment under Fed. R. Civ. P. Rule 55(a) & (b)(1) to be heard on April 9, 2008, at 8:30 a.m. in the United States Courthouse for the Western District of Wisconsin.

8. Plaintiff GECC is entitled to entry of judgment against Defendant John C. Hintz in the amount of Six Hundred Forty-Four Thousand, Nine Hundred Forty and 04/100 Dollars (\$644,940.04).

9. Plaintiff GECC is entitled to entry of judgment against Defendant Nancy R. Hintz

in the amount of Six Hundred Forty-Four Thousand, Nine Hundred Forty and 04/100 Dollars (\$644,940.04).

ORDER FOR JUDGMENT

1. Plaintiff GECC is entitled to Entry of Judgment against Defendant John C. Hintz in the amount of Six Hundred Forty-Four Thousand, Nine Hundred Forty and 04/100 Dollars (\$644,940.04).
2. Plaintiff GECC is entitled to Entry of Judgment against Defendant Nancy R. Hintz in the amount of Six Hundred Forty-Four Thousand, Nine Hundred Forty and 04/100 Dollars (\$644,940.04).

There being no just reason for delay,

LET JUDGMENT BE ENTERED ACCORDINGLY FORTHWITH.

Dated: April 9, 2008

United States District Court

Barbara B. Crabb
Honorable Barbara B. Crabb
Chief Judge
United States District Court for
the Western District of Wisconsin

Judgment entered this 10th day of April, 2008.

Teresa M. Owens
Theresa M. Owens, Clerk U.S. District Court